

***United States Court of Appeals
for the Second Circuit***

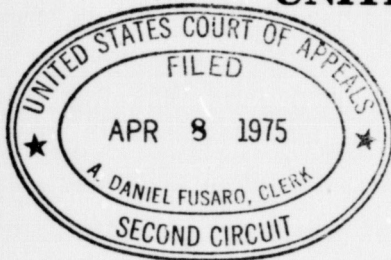


APPENDIX

ORIGINAL
WITH PROOF
OF SERVICE

74-2597

UNITED STATES COURT OF APPEALS



for the

SECOND CIRCUIT

B
P/S

PAUL CAMPBELL,

Plaintiff-Appellee,

-against-

R. G. DICKINSON & CO., ROBERT GOODELL
DICKINSON and MAURICE BURR CORNELISON,

Defendants,

R. G. DICKINSON & CO.,

Defendant-Appellant.

Appeal From the United States District Court
for the Southern District of New York

APPENDIX

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Index to Appendix

	<u>Page</u>
Docket Entries -----	A - 1.
Complaint -----	A - 3
Transcript of Trial (excerpts) -----	A - 8
Exhibit A (promissory note) -----	A - 89
Exhibit 5 (letter of resignation) -----	A - 90
Exhibit 6 (letter) -----	A - 91
Exhibit 17 (letter) -----	A - 92
Judgment -----	A - 93
Motion for Judgment N.O.V. or New Trial -----	A - 94
Affidavit in Support of Motion (excerpts) -----	A - 95
Memorandum Order on Motion -----	A - 97

Docket Entries

Jan.29-74 Filed complaint & issued summons.
 Feb.19-74 Filed summons & return, served the following
 R.G. Dickenson & Co. by R.G. Dickenson - 2-1-74
 Robert Goodell Dickenson - 2-1-74
 Maurice Burr Cornelison - 2-1-74
 Feb.22-74 Filed ANSWER and counterclaim of defts. SBSB&S
 Feb.22-74 Filed defts' notice to take deposition
 & request for production of documents
 Feb.25-74 Filed plttf's REPLY to counterclaim
 Feb.25-74 Filed plttf's cross notice to take deposition
 to request for production of documents
 July 15-74 Pre trial conference held
 Sep.10-74 Filed plttff's interrogs to deft Dickinson
 Sep..17-74 Filed plttf's request to charge jury
 Sep. 17-74 Filed Plttf's Trial Memo
 Sep.16-74 Filed defts' requested jury instructions
 Sep.16-74 Filed defts' trial memorandum
 Oct.3-74 Filed Order & Judgment #74,786. Plttf have
 judgment against deft R.G. Dickenson & Co.
 the sum of \$18,000, on the first count
 with interest at 6% from 11-1-72 & \$15,000
 on the second count 7% interest from
 7-12-72, with costs to be taxed. Complt is
 dismissed as to defts R.G. Dickenson &
 M.B. Corneilison...Clerk
 Approved, MAC MAHON,J. m/n
 Sept 30-74 Jury trial begun & cont'd.
 Sept 30-74 Trial concluded (1 day). Jury verdict for plttf.
 Oct.15-74 Filed defts affdvt & notice of motion to set
 aside verdict & judgment of 10-3-74.
 Ret. 10-25-74.
 Oct.15-74 Filed defts memo in support of motion.
 Oct.22-74 Filed plttffs affdvt in opposition to defts
 motion for judgment N.O.V.

- Oct.24-74 Filed Bill of Costs on Judgment #74,786
 as taxed in the amount of \$163.74, in
 favor of pltff as against deft R.G.
 Dickenson & Co. only, & added to the
 judgment.....Clerk.
- Oct.29-74 Filed Memo-End on motion of 10-15-74.
 Treating the within as a motion for
 reargument, the motion is granted, & upon
 reargument we address our decision at the
 conclusion of the trial denying defts
 motion for judgment N.O.V. MAC MAHON,J. m/n
- Oct.31-74 Filed transcript of record of proceedings
 dated Sept 30, 1974.
- Nov.27-74 Filed Defts' Notice of Appeal to USCA from
 order denying deft's motion for judgment,
 ent. 10-29-74.....Notices Mailed 11-29-74.
 To: Olitt, Friedberg & Kagel, 200 PkAve, NYC
- Nov.27-74 Filed Bond Undertaking for costs on Appeal -
 \$250 - Fireman's Fund.

Complaint

Plaintiff, by his attorneys, Olitt & Friedberg, as and for his complaint, alleges upon information and belief except as to paragraph "1" which plaintiff alleges upon knowledge as follows:

THE PARTIES

1. Plaintiff is a citizen of the State of Connecticut, residing at 477 Field Point Road, Greenwich, Connecticut, and was employed by defendant R.G. Dickenson & Co. to perform services in the City and State of New York.

2. Defendant, R.G. Dickenson & Co., (hereinafter "COMPANY") is a partnership and resident of the State of Iowa and maintains its principal place of business at 910 Grand Avenue, Des Moines, Iowa.

3. Defendant, Robert Goodell Dickenson (hereinafter "DICKENSON") is a citizen and resident of the State of Iowa.

4. Maurice Burr Cornelison (hereinafter "CORNELISON") is a resident and citizen of the State of Iowa.

JURISDICTION AND VENUE

5. This action arises out of a transaction of business in the Southern District of New York, between parties resident of different States.

6. The amount in controversy herein exceeds \$10,000 exclusive of interest and costs.

7. This Court has jurisdiction, pursuant to Section 22(a) of the Securities Act of 1933, as amended (15 U.S.C. 77 v (a)). Section 27 of the Securities Exchange Act of 1934 as amended (15 U.S.C. 678 et seq.), pendant jurisdiction, and diversity of citizenship with a controversy in excess of \$10,000.00.

COUNT I

8. Plaintiff repeats, reiterates and realleges each allegation in Paragraphs 1-6 with the same force and effect as if more fully set forth herein.

9. Defendant COMPANY is engaged in the security business, and is a regular or associated member of the Chicago Board of Trade, the Midwest Stock Exchange and the Chicago Mercantile Exchange, all national securities exchanges, all of the individual defendants are Registered Representatives, officers and directors of COMPANY and all are subject to, among other regulations, the requirements of the Securities Exchange Act of 1934, and the Securities Act of 1933.

10. On or about April 26, 1972, plaintiff was employed by defendant COMPANY in the City and State of New York to be trained, and become licensed to sell securities.

11. That such employment was for a period of one year from on or about April 26, 1972 at a salary of \$2,500.00 per month plus reimbursement of expenses.

12. That plaintiff duly performed his services until he was involuntarily and wrongfully terminated by defendant in or about November 30, 1973, prior to the termination date as fixed by agreement.

13. That because of such wrongful termination, there remains due and unpaid to plaintiff from the defendant Company, the sum of \$18,500.00 for unpaid salary and unreimbursed expenses.

14. That plaintiff has duly demanded payment of the said \$18,500.00, no part of which has been paid by defendant.

COUNT II

15. Plaintiff repeats and realleges each and all of the allegations contained in Paragraphs 1 through 14 above, inclusive, with the same force and effect as if set forth at length herein.

16. On or about May 31, 1972, defendant COMPANY's New York office executed an order to buy 3000 shares of the

common stock of Mutual Oil America Inc., a security traded in the over the counter market, for a customer of defendant COMPANY (the trade). The trade was more particularly made through the Registered Representative, employee of COMPANY, Dennis McNeil, which order was subsequently denied by the purported purchaser.

17. Defendants advised Plaintiff that they paid for the trade, and then sold such securities at a loss of \$15,000.00.

18. Defendants advised Plaintiff that they held him responsible for such loss.

19. Defendants demanded of Plaintiff, as a condition to his continued employment, that Plaintiff "make good the loss" of defendant COMPANY, suffered by virtue of the aforementioned transaction by lending \$15,000 to COMPANY.

20. Plaintiff, acting under a misapprehension of fact, delivered to Defendants the sum of \$15,000 in reliance on Defendants' promise that said sum would be treated as a loan by Plaintiff to Defendant COMPANY repayable upon his demand, and that Defendant would issue a security to evidence this allegation as such is defined in the Securities Exchange Act of 1934, and the Securities Act of 1933.

21. Defendant COMPANY accepted Plaintiff's loan, and failed to include such loan in any of its financial statements,

from the time of such loan to date, as required pursuant to the Securities Exchange Act of 1934.

22. That the Defendants have used the United States Mails, interstate commerce and telephonic communications to effect this loan transaction, all in violation of Section 5, 10b, 17, 18 of the Securities Act of 1933, and Sections 8, 10, 12, 13, 17, 18, 20 of the Securities Exchange Act of 1934, the rules and regulations thereunder and of the Midwest Stock Exchange, Chicago Board of Trade, Chicago Mercantile Exchange and the National Association of Securities Dealers.

23. By virtue of the foregoing, Defendants are indebted to Plaintiff in the sum of \$15,000.00, together with interest from May 31, 1973.

WHEREFORE, Plaintiff respectfully requests this Court to enter judgment in favor of Plaintiff and against Defendants in the sum of \$18,500.00, together with interest from April 26, 1972 on the first count, and in the sum of \$15,000.00, together with interest from May 31, 1973 on the second count and the costs and disbursements of this action, and that this Court grant such other and/or further relief it may deem just and proper.

Dated: January 22, 1974.

Transcript of Trial (excerpts)

WCS

12

the fact that he was fired, or as to the fact that he loaned \$15,000 to his employer.

Thank you.

THE COURT: All right, proceed.

MR. FRIEDBERG: Plaintiff calls Maurice Cornelison as its first witness.

--

MAURICE B. CORNELISON, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FRIEDBERG:

Q Mr. Cornelison, you are one of the defendants in this action, aren't you?

A Yes, sir.

Q You are also an officer of R. G. Dickenson & Company which also is a defendant in this action, is that not so?

A That's right.

Q Your counsel and I have agreed that there are certain exhibits that we have not disagreed on, and we are going to submit those into evidence by stipulation. I would like, if I may, to have you identify these documents so that we can save a lot of time.

wcs

Cornelison-ditect

16

1 in New York that would be very profitable to R. G. Dickenson
2 Company and to Paul Campbell, Jr. And in general he was
3 quite knowledgeable about our business -- I am talking about
4 the brokerage business.
5

6 Q Was there anyone else present with you and Mr.
7 Campbell at that time?

8 A I recall him having dinner with a Mr. John
9 Brainard II and Paul Campbell.

10 THE COURT: Where did you have this talk, out in
11 Iowa?

12 THE WITNESS: Yes, in Iowa, sir.

13 A Then there was the following day -- I can't
14 recall exactly -- we had a meeting in the office of the
15 president of our firm, which is Mr. Phil Boesel, Jr., and
16 Mr. Robert Dickenson was present and myself. I think
17 Mr. Brainard and Mr. Campbell were all in the office at the
18 same time.

19 Q If I could jump to the end of the conversations,
20 would it be a correct statement of fact to say that you
21 reached an agreement for Mr. Campbell to come and work for
22 R. G. Dickenson?

23 A Yes, it was agreed on that it would be a satis-
24 factory arrangement.

25 Q And you were planning on opening up a branch

1 wcs Cornelison-direct

17

2 office in New York yourself?

3 A No, we had a branch office in New York, but not
4 a sales branch.

5 Q I am sorry. When did that open?

6 A Sorry, I can't give you the exact date.

7 Q Approximately. Was it a month before you spoke
8 with Mr. Campbell?

9 A Oh, no. I would say a couple of years before.
10 I stand to be corrected on that.

11 Q At that time -- and I am now showing you Plain-
12 tiff's Exhibit 2, and the time I am referring to is the
13 April 26 or thereabouts, 1972 date -- did Mr. Campbell
14 complete this employment application?

15 A Sir, I assume that he did. That is the date
16 on the applications. I assume that he did at the same
17 time. That is usually our procedure.

18 Q Do you recall reviewing that application at the
19 time?

20 A Yes, sir. I review all of them, sir.

21 Q Both of those applications would indicate that
22 Mr. Campbell was in the employ of Wood Walker, which is a
23 broker -- on the reverse side, sir, turn it around.

24 A It shows that he had been. It doesn't show that
25 he is.

WCS

Cornelison-direct

22

1 A But in their opinion he was qualified, and that
2 is a national exchange, yes.

3 Q Fine. But even though they thought he was
4 qualified, he still could not purchase or sell an over-the-
5 counter stock?

6 A Not as far as we are concerned or the NASD.

7 Q All right.

8 A That's right.

9 Q What were the terms of M. Campbell's employment?

10 A Mr. Campbell's employment -- he was employed as
11 a co-manager of the New York office at the time at our first
12 sitting -- at the time that we agreed that he work for us.

13 Q What was the period of time that agreement was
14 to be for?

15 A I know of no set date. We didn't hire him for
16 one month, one year, or two years. He just went to work,
17 as usually is the case.

18 THE COURT: You mean there was an indefinite term?

19 THE WITNESS: Indefinite, sure. He went to
20 work for us. We hired him.

21 Q How much was he supposed to be paid?

22 A Well, at that time they wanted to have what is
23 called a guarantee in our business. We don't usually
24 give guarantees, and if we do we usually give them for a
25

wcs

Cornelison-direct

23

period of three months.

THE COURT: The answer is not responsive.

Read the question, please.

(Question read.)

A As I said, he asked for six months, and we
condescended to give him \$2000 for six months.

Q Didn't you just testify that you hired him for
no specific term?

A That's right.

Q Then I --

A We offered to pay him \$2000 for six months, but
we didn't hire him for any specific time.

THE COURT: Isn't six months in your mind a
specific time?

THE WITNESS: NO, the job here --

THE COURT: What? Are you telling us that you
don't think six months is a definite period of time?
I just want to understand you.

THE WITNESS: Well, then let me explain.
They are hired on commission, but we realize living in
New York he needed some money to live on for a period of
time, so that he could do his job. We agreed to pay him
\$2000 for six months.

THE COURT: Against commissions?

wcs

Cornelison-direct

24

1 THE WITNESS: Against commissions. That was
2 a guarantee. If he made more than that, after that period,
3 he was to be paid.
4

5 Q Now you have got me a little confused. Forgive
6 me if I take you back over this.

7 You say he was supposed to be given \$2000 a
8 month against commissions; is that correct?

9 A If he were to earn more than that, we would
10 have paid him more than that.

11 THE COURT: You mean if he got greater commissions
12 than \$2000 a month -- I don't understand. No wonder we
13 have a lawsuit.

14 Q Perhaps I could clear it up. He would get
15 \$2000 a month.

16 A Yes, sir.

17 Q And if he earned commissions in excess of
18 \$2000 a month, he would get the \$2000 plus whatever the
19 commission would be giving you credit for the \$2000.

20 A That's right.

21 Q Is that correct?

22 A That is usually the case.

23 Q He came to work for you on April 26, 1972, is
24 that correct?

25 A In April -- that was our agreement at that time,

1 WCS

Cornelison-direct

25

2 I want to point out, yes, sir.

3 Q Do you recall when the National Association of
4 Securities Dealers gave him his license to do securities
5 transactions?

6 A I think it was some time in July. At least
7 he wasn't qualified and we gave him the \$2000 because we
8 hired him. But he did not make any commissions, because
9 he was not able to solicit.

10 Q So then, in other words, you made an arrangement
11 with him to pay him a commission when indeed he could not
12 earn that commission because he was not licensed to earn
13 that commission?

14 A At that time because we did not know that NASD
15 was not going to license him.

16 Q The NASD did license him, did it not?

17 A Eventually.

18 Q We had a pretrial deposition in this matter.
19 Do you recall that?

20 A Yes, sir.

21 Q Where you and I sat with Mr. Hawkins in Mr.
22 Hawkins' office?

23 A Yes, sir.

24 Q And when you returned your deposition to me,
25 you said that he was approved by the National Association

wcs

Cornelison-direct

26

1 of Securities Dealers on July 10, 1972. Does that
2 sound substantially correct?
3

4 A That's right.

5 Q And you would have taken that from some business
6 record that you have down in Des Moines?

7 A I think so.

8 Q So that means from April 26 to at least July 10,
9 1972, you paid him money against commissions which he could
10 not have earned, is that correct, at that time?

11 A He was in our employee, but he was not, to my
12 knowledge, soliciting orders.

13 THE COURT: I am afraid, Mr. Cornelison, your
14 answer is not responsive. If it were a tennis match,
15 you would not be putting the ball back over the net.

16 Read the question, please.

17 (Question read.)

18 A No, that is not correct.

19 Q Then perhaps you could explain it to me, because
20 I lost you.

21 A Well, all right. We are not going to fire
22 him, because the NASD required him to take a test, study and
23 take a test, so we are not going to fire him. But he is
24 in our employ, we have made an agreement with him that he
25 would get \$2000 a month.

WCS

Cornelison-direct

27

Now, he can do public relations work, he can call on accounts, he cannot solicit orders. He can do his homework in preparing for his job. And we did pay him during that period, as the records will show.

Now, as far as our knowledge is concerned, he had no authority to solicit commission trades during that time, but we did pay him.

Now, does that clear up anything?

Q And this pay was a guaranteed amount?

A That's right.

Q So that at the end of some three months that it took him to pass that test, he was entitled to keep whatever money he had earned without setting it off against any commissions?

A That's right.

Q Is it your recollection that he did in fact pass the NASD exam at the earliest possible time that he could have?

A Yes. I am sure that is true.

Q In other words, he moved with due diligence?

A That's right.

Q In taking the test.

A Yes.

Q I would like to jump ahead in your story and,

wcs

Cornelison-direct

29

1 Q So then if Mr. Campbell worked for you for six
2
3 months, which I believe you testified to, he was paid
4 \$12,000?

5 A Yes, sir.

6 Q When his relationship terminated with you on
7 October 31, 1972, had you at Dickenson & Company made a
8 decision to close the New York branch office?

9 A By October 31?

10 Q Yes.

11 A Yes. I am looking at the economics of the
12 office. It was decided that we would close that office.

13 Q And in fact did you convey that to Mr. Campbell
14 at or about that time?

15 A I personally did not, but I assume that it was.

16 Q Did he work for you after October 31, 1972,
17 to your knowledge?

18 A No.

19 Q So then there is really no question that as of
20 October 31, 1972, Campbell's employment relationship with
21 Dickenson was terminated; is that a fact?

22 A Yes. He resigned.

23 Q Did Mr. Campbell at that time send to you the
24 original of what we have marked as Plaintiff's Exhibit 5?

25 A Yes.

1 wcs Cornelison-direct 30

2 Q Might I ask, because it is a very brief document,

3 that you just read the text of it.

4 A "R. G. Dickenson Company. Attention Mr.

5 Robert G. Dickenson.

6 "Gentlemen: Effective October 31, 1972, please

7 accept my resignation from R. G. Dickenson & Company."

8 Signed "Very truly yours, Paul Campbell, Jr."

9 Q But in fact at that time you had closed the

10 New York office, is that correct, so that --

11 MR. HAWKINS: At what time, your Honor?

12 MR. FRIEDBERG: October 31, 1972.

13 A The exact date I cannot testify to. It was

14 in that very near date, yes.

15 Q Had you offered Mr. Campbell an opportunity to

16 move to another branch office?

17 A No, we did not. He had resigned.

18 Q Did you have any conversation with him --

19 A I do not recall of any.

20 Q Was there another opportunity in the company

21 after October 31, 1972?

22 A There were several, had he asked. We have

23 offices in other areas.

24 Q Outside of New York City?

25 A Outside of New York City, back in Iowa.

wcs

Cornelison-direct

31

Q So that would require a man to move from New York, say, to Iowa. But you testified you did not give him that opportunity, is that so?

A Not after he resigned.

Q Now I would like to move into an area which is referring to a trade of Mutual Oil in May, end of May, early June 1972, and ask you if you have an independent recollection of the events that took place around that time.

A I have it of some of the events that took place, not the original events, but the results of the events.

Q In order to keep our promise of brevity, could you tell us what happened that resulted in Paul Campbell giving to R. G. Dickenson a check in the sum of \$15,000?

A At some time close to May 31, somebody in our New York office sold 3000 shares of stock, Mutual Oil of America, to the Kingswood Growth Fund here in New York. They turned the sale down. I say "they." Kingswood Growth Fund turned the sale down. It's called a D.K., "don't know who traded."

When they called our attention to that in the back office, the New York office was contacted, we said, "What's the matter here?" We were assured by somebody in that office at that time, "No problem," one of the managers at that time, Mr. Campbell or Mr. Brainard, "No

1 wcs Cornelison-direct

32

2 problem. Redeliver the stock."

3 It was redelivered and D.K'd. again, or said
4 they didn't know of the trade.

5 Naturally we had purchased the stock, we had it
6 back in our inventory, and we had to liquidate it, causing
7 a loss of some \$15,000 at that time.

8 Now, is that what you want?

9 Q Yes, that is.

10 I am now going to show you Plaintiff's Exhibits
11 7, 3 and 9, 7 being your -- well, why don't you identify
12 them that way. I think it will be easier.

13 Identify Exhibit 7 for us, please.

14 A 7 shows our confirmation of a sale to -- our
15 purchase from Mayer Schweitzer for 3000 shares of Mutual
16 Oil of America. The number of our -- two confirmations.

17 Exhibit No. 8, the top one, is the sale of that
18 3000 shares to Kingswood Growth Fund, same day.

19 Q When you say same day, you mean the two on
20 Exhibit 3?

21 A These are the same day here.

22 THE COURT: Same day as what, sir?

23 THE WITNESS: Well, the same day there was a
24 cancelation of that sale, the trade, as of 5/25, to
25 Kingswood Growth Fund at \$13.50, on this page. There is

WCS

Cornelison-direct

36

somebody would put in there. The information is correct here.

THE COURT: We will take a short recess.

(Recess.)

MR. FRIEDBERG: May I have the last question and answer read, please?

(Question and answer read.)

BY MR. FRIEDBERG:

Q Sir, is it your obligation to review those confirmation slips as an officer of the defendant Dickenson & Company?

A One officer okays them every day, yes. It was not mine at that time.

Q Could you identify from any of those last, or from Exhibits 7 or 8, whether or not an officer did in fact review that confirmation?

A Yes.

Q Would you tell us who that officer was?

A I believe it is Phil Boesel, our president.

Q Could you tell us from those confirmations if there is an indication as to who the registered representative for Dickinson was?

A RR #40.

Q Are you familiar with who RR #40 was in 1972?

1	wcs	Cornelison-direct	39
2	if you haven't got it, I haven't.		

3 MR. FRIEDBERG: In the interests of brevity we
4 will continue on, and if your counsel and Mr. Dickenson
5 find it, then they can produce it for us at the time.

6 Q Did there come a time that you had a conversa-
7 tion with Mr. Campbell about the supposed \$15,000 loss?

8 A There came a time when I personally had --

9	0	Correct.
---	---	----------

10 A There was a time; yes, sir.

11 Q Can you fix an approximate time for us?

12 A I cannot. I would say it was, say, ten days
13 after the fact.

14 Q So we would be talking, if I am correct, some
15 time around the middle of June 1972?

16 A Possibly, that's right.

17 Q What did you say to Mr. Campbell, what did Mr.
18 Campbell say to you, relative to the \$15,000?

19 A I cannot recall.

20 Q In substance, certainly not a verbatim conversa-
21 tion. I know we cannot recall what we said ten minutes
22 ago, but in substance.

23 A I was told by Mr. Dickenson or Mr. Boesel at one
24 time that they had been in contact with him and that he
25 would have the money ready for me when I made a regular

1 wcs Cornelison-direct 40

2 inspection tour of our office, in that general time.

3 Q Did he indeed give you \$15,000?

4 A He did not.

5 Q Did he indeed give Dickenson \$15,000?

6 A Not at that particular time.

7 Q Did he at any time?

8 A He did after that, yes, sir.

9 Q Will you fix a time for us approximately when he

10 gave you this?

11 A Whenever he deposited that check. I don't know

12 what the date was exactly.

13 Q I am going to give you Exhibit 11, which is the

14 statement from the U. S. Trust Company, and ask you:

15 Did Dickenson maintain an account at U. S.

16 Trust?

17 A They had an account at U. S. Trust. Yes,

18 obviously they did have.

19 Q Is the \$15,000 deposit that is reflected in there

20 the \$15,000 that Mr. Campbell gave to Dickenson?

21 A Yes.

22 Q Can you fix a date of that?

23 A 7/12.

24 Q Of 1972?

25 A 1972.

wcs

Cornelison-direct

47

deposition.

A It is a statement given to our office in New York, for the months of June, May, June, and part of July.

Q And it indicates there, if I am correct, that Mr. Campbell indeed gave to Dickenson \$15,000 and it does not show, if I am correct, \$15,000 being given back to Mr. Campbell. Am I correct?

A I don't think this shows being given -- yes, it is on here, there is a \$15,000 credit and a debit. But Mr. Campbell's name is not on this any place.

Q Now I am going to show you Plaintiff's Exhibit 6, which is a letter dated October 18, 1972, signed by Paul Campbell, Jr., and it is addressed to Mr. J. Philip Boesel, Jr. president of R. G. Dickenson. Again, because it is a relatively short document, may I ask you to read what it says.

A I never saw this.

"I understand that you and John Brainard had a telephone conversation October 9 with regard to the \$15,000 owed to me by R. G. Dickenson Company. As the office is being closed on October 31, I will be expecting a certified check payable to me by that date. Thank you in advance."

Signed "Paul Campbell."

wcs

Cornelison-direct

48

Q And that, I take it, was never paid to Mr. Campbell, a certified check for \$15,000?

A I never saw the letter.

Q I understand. But was Mr. Campbell --

A No.

Q -- ever given a certified check for \$15,000?

A No, he was not.

MR. FRIEDBERG: I would like this letter marked for identification.

THE COURT: You can mark it.

(Plaintiff's Exhibit 17 was marked for identification.)

Q Sir, I would like you to look at the pink attachment in the lower left-hand corner of that. Can you tell me if you are familiar with the signature that appears on there?

A Excuse me, it shows the delivery, where delivered?

Q Yes, sir. You will forgive me, if I may. You will find underneath --

A It says "Paul Campbell," the sender.

Q No, underneath here is a signature or what appears to be a signature. Could you identify that for us?

A I surely cannot.

1 wcs Brainard-direct 63

2 A I went to prep school, I went to the University

3 of South Carolina.

4 Q What degree did you get from the University of

5 South Carolina?

6 A I didn't graduate from the University of South

7 Carolina.

8 Q Did there come a time that you were in Des Moines,

9 Iowa, in the latter part of April 1972?

10 A Yes. Mr. Campbell and I went to Des Moines,

11 Iowa.

12 Q Could you tell us the circumstances surrounding

13 the fact of why you went out to Des Moines at that time?

14 A We were requested to go to Des Moines, Iowa, by

15 our employer.

16 Q Were you present there at a meeting or meetings

17 with Mr. Campbell?

18 A Yes.

19 Q Could you fix for us the persons that you met

20 with?

21 A We met with Mr. Dickenson and Mr. Boesel and

22 Mr. Cornelison, and Mr. Campbell and myself.

23 Q Referring to the employment only, of Mr. Campbell,

24 can you tell us if Mr. Campbell was employed by Dickenson at

25 that April 1972 meeting?

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Brainard-direct

64

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A Yes.

Q Could you tell us the terms of his employment?

A It was my understanding that Mr. Campbell would be employed for at least a year in order to assist in getting this office off its feet, back in New York, the office back in New York.

Q At what salary?

A \$2500 a month.

Q Was there an offer made to him at that time for a specific period?

A It was my understanding it would be a year, yes.

Q Did Mr. Campbell accept that?

A Yes.

Q Did he then go and work with you at the R. G. Dickenson New York office?

A Yes, he did. There were just the two of us, to start with. Excuse me a minute. Then there was another man. Three. Three of us.

Q I had a little difficulty hearing you, and if you could keep your voice up I am sure the jury would appreciate it.

A I am sorry.

Q Who else was in that office in April 1972, besides you and Mr. Campbell, if anyone?

1 wcs Brainard-direct 65

2 A Dennis McNeill. I can't remember exactly when

3 Dennis joined R. G. Dickenson precisely.

4 Q What was Mr. Campbell's job specification at

5 that time in April of 1972, if you recall?

6 A Mr. Campbell was to assist me in trying to

7 organize the office inasmuch as it was an empty room,

8 literally. That was to help with telephones and hire

9 a secretary and, in other words, get the physical plant in

10 evidence. And in addition to that, he was supposed to

11 study so he could take his test and get registered.

12 Q It is accurate at that time that he was not

13 licensed to deal in securities, is that correct?

14 A Yes, that's correct.

15 Q Do you recall when that office closed, if indeed

16 it did?

17 A October of '72.

18 Q Do you recall the circumstances of the closing

19 of that office?

20 A Yes.

21 Q Could you tell us what they were?

22 A Well, in October the situation had changed some-

23 what, in that after Paul became registered and time went by

24 and we got into early September, Paul was asked to help with

25 the secretary, in other words, did the general running of

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Brainard-direct

66

1 the office.

2
3 One day the phone rang early in October, I believe
4 it was Mr. Cornelison, and told us that that was it and
5 that the office would be closed.

6 Q How was your employment terminated if it was?

7 A I just told you.

8 Q Do you know if Mr. Campbell was offered an
9 opportunity to continue working for the company?

10 A If he was, I was unaware of it.

11 Q Were you aware that he was not offered an oppor-
12 tunity?

13 A Yes.

14 Q I would like to ask you if you heard the testi-
15 mony of Mr. Cornelison referring to how that Mutual 3000-
16 share trade took place.

17 A Yes, I did.

18 Q In order to keep to our promise of brevity, could
19 you tell us what your recollection of the circumstances
20 of that trade was?

21 A Yes. The gentleman who is not here, Dennis
22 McNeill, placed an order with the Chicago office to buy
23 3000 shares of whatever the stock was, Mutual Oil.

24 Q I am sorry, I cannot hear you.

25 A Dennis McNeill, another registered rep in the

1 WCS

Brainard-direct

2 office, placed an order to purchase the stock. The modus
3 operandi was to pick up the telephone and dial our Chicago
4 trading office.

5 The order was placed, and then executed.

6 I became aware of the transaction because I got a call from
7 the back office. The clerical work is done in Des Moines.
8 The woman in charge of that department called me and said
9 that the stock had been delivered and refused, and asked me
10 to look into it, which I did.

11 I then conferred with Mr. McNell, and he said to
12 send the trade back again, which I relayed the message to
13 Sylvia -- I forgot her last name -- and the trade was
14 subsequently, I guess, sent and D.K.'d.

15 Q I would like to ask you to take a look at
16 Exhibit 8.

17 That shows a number for the registered represent-
18 ative?

19 A Yes.

20 Q Does it not?

21 A Yes, it does.

22 Q Whose number was that in October of 1972, if
23 you know?

24 A It was my number. No. 40?

25 Q Yes.

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Brainard-direct

68

1 A It was my registered number, assigned to me by
2
3 R. G. Dickenson.

4 Q Yet you testified that you did not place that
5 order, is that not correct?

6 A That's correct.

7 Q Do you have any idea of how that number got there?

8 A I could speculate, but it would be pure specula-
9 tion.

10 Q No, I would not want you to speculate. Only
11 if you have knowledge of it.

12 THE COURT: Do you recognize the handwriting?

13 THE WITNESS: I recognize one handwriting here,
14 sir, which I wrote subsequently.

15 THE COURT: Do you recognize any of the rest
16 of it?

17 THE WITNESS: No, sir.

18 THE COURT: The No. 40, do you recognize that
19 handwriting?

20 THE WITNESS: Yes, sir, I do.

21 THE COURT: Whose handwriting is it?

22 THE WITNESS: No. 40 is printed on a machine.
23 The only handwriting is initials.

24 Q And it was not your trade, am I correct?

25 A It was not. The account that it went to was

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Brainard-direct

69

Dennis McNell's account.

Q Were you present at a time --

THE COURT: What do you mean the account that it went to?

THE WITNESS: The Kingswood Growth Fund was his account. He handled that account.

THE COURT: I see. In other words, the customer.

THE WITNESS: The customer, yes, sir.

Q Did there come a time, to your knowledge, that Mr. Campbell gave \$15,000 to R. G. Dickenson?

A Yes, sir.

Q Could you recite to us what the circumstances of that were, if you recall?

A Yes. I received a phone call from Mr. Boesel, which sticks out in my mind particularly, but, as were the habits, the phone call was generally a conference call, in that they have a conference microphone in Mr. Boesel's office. So I believe Mr. Cornelison was present as well. The gist of the conversation was that there was an error -- rather, there was a \$15,000 loss, and that I was told that money was short and that they wanted the error covered. I discussed the matter with Mr. McNell, who declined any knowledge of the matter. I was then told to solicit basically anybody else in the office that wanted to come up to

1 wcs Brainard-direct 70
2 it, with the inference that if the money did not come up,
3 the office would be closed. That was not stated, however,
4 but that was my interpretation of the conversation.

5 I was assured that we would, if the money were
6 produced, that we would remain in business, that I would
7 receive my guarantee, which was \$3000 a month, Mr. Campbell
8 would retain his position; that we would have an oppor-
9 tunity to build this office as we had agreed previously.

10 I told them that we would get back to them.
11 And so Mr. Campbell and I discussed the situation, and
12 inasmuch as Mr. Boesel and Mr. Cornelison, by inference, I
13 think Mr. Dickenson, gave us their word of honor, that they
14 were men of good faith, I encouraged Paul to go to the bank
15 and get a loan, as I was sure that he would get it back.
16 Such was not the case.

17 Q Was there a specific promise of repayment, to
18 your knowledge?

19 A It was my understanding that there would be, yes,
20 sir.

21 Q There came a time when you gave a promissory
22 note to the plaintiff for \$7500, is that a fact?

23 A Yes.

24 Q Could you tell us the circumstances behind that?

25 A Yes. After we were fired, I felt very badly

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Brainard-direct

71

1 about the situation, and in a weak moment, as a friend,
2 I didn't feel that Paul, one, had any obligation at all
3 for the \$15,000 and that he had done it because he had
4 believed in me and because he had believed in the firm, and
5 that we had something that was worth trying to preserve,
6 and so he had obligated himself. So I told him that in
7 the event that he never got the money back that I would be
8 good for half of it.

10 Q Have you given him any part of that \$7500 loan?

11 A No.

12 Q Have you come here under subpoena today?

13 A No.

14 Q Could you tell us why you came here?

15 A Yes. I came here because I think there was a
16 great injustice done, both to Mr. Campbell and myself.

17 MR. FRIEDBERG: You may inquire, Mr. Hawkins.

18 CROSS-EXAMINATION

19 BY MR. HAWKINS:

20 Q Mr. Brainard, you said that after you were fired
21 you gave Mr. Campbell a note for \$7500, is that correct?

22 A That's right, yes, sir.

23 Q And the reason you gave it to him then was that
24 you wanted him to have evidence that if he did not get repaid
25 by R. G. Dickenson Co. you would stand half his loss.

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wcs Brainard-cross

72

Is that your testimony?

A Yes, sir, that's correct.

Q The note in fact that you gave him was dated prior to the time that Mr. Campbell paid the \$15,000 to R. G. Dickenson & Company, was it not?

A I don't really recall. It might have been.

Q It may have been?

When were you fired?

A In October.

MR. HAWKINS: Do you want to admit the offer and receipt of that (handing to Mr. Friedberg)?

MR. FRIEDBERG: I have no knowledge of it.

I suppose you ought to have the witness look at it and see if he can indeed do that.

Q I have marked as Exhibit A for identification a photostat of a promissory note dated July 3, 1972, which purports to bear your signature, Mr. Brainard, and I ask you if that is in fact your signature.

A Yes, that's right. That's correct, July 3, right.

MR. HAWKINS: I ask that this be admitted in evidence as Exhibit A.

THE COURT: Received.

(Defendant's Exhibit A was received in

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Brainard-cross

evidence.)

Q This note does not say anything about owing Mr. Campbell the money only if he cannot get it back from R. G. Dickenson & Company, does it? Do you want to look at it again?

A No.

Q It does not say anything about that, does it?

A No it does not.

Q This note in fact says that you owe Mr. Campbell the sum of \$7500 payable on demand as of July 3, 1972, isn't that correct? Do you want to look at it again?

MR. FRIEDBERG: I am constrained to object.
The document speaks for itself.

THE COURT: Yes.

Q But you say that at the time you gave Mr. Campbell this note it was understood between you that you would only owe him the money if he did not get it back from R. G. Dickenson & Company?

A Well, let me put it in perspective, if I may.

Q Please do.

A At the time I wrote out that note I was asking Paul, as I indicated before, he and I discussed this situation. Paul was to go to the U. S. Trust Company and borrow the money, because I didn't have the money.

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Brainard-cross

2 He didn't ask me for that note, and I felt that since we
3 were trying to work this thing out together that I would
4 try to stand with him, and if it would help, I'd give him
5 the note. This is something I felt would back him up,
6 because I had faith in the firm and Mr. Dickinson and Mr.
7 Boesel's word. What I said before is my interpretation,
8 my rationale, if you will.

9 THE COURT: You say Mr. Boesel's word. Who is
10 Mr. Boesel?

11 THE WITNESS: He is the president of R. G.
12 Dickenson & Company.

13 THE COURT: What was his word? What did he say,
14 this word you had so much faith in?

15 THE WITNESS: He said on his honor.

16 THE COURT: On his honor what?

17 THE WITNESS: That we were doing the right thing
18 by giving him the firm -- loaning the firm the money, and
19 that we would have the opportunity, Paul would have the
20 opportunity to be repaid the loan, that the office would
21 stay open, and that our venture would continue with their
22 support and backing and that there would not be any recrimin-
23 ations, if you will.

24 Q Did Mr. Boesel tell you that R. G. Dickenson &
25 Company were short of cash?

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Brainard-cross

77

1 purchase of stock in Albany International for Kingswood
2 Growth Fund and ask you if you can identify that as being
3 as what it purports to be.
4

5 A It purports to be a confirm. Is that what you
6 are asking me?

11 7 Q Do you recall that transaction?

8 A Not specifically, no. In other words, this
9 was an underwriting participation that I guess was sold to
10 Kingswood.

11 Q Do you recall that or are you just reading from
12 the document?

13 A I am reading from the document. I presume that
14 they bought some Albany.

15 Q Is that your number on the document?

16 A Yes. Could I make an answer to that number
17 business?

18 Q Certainly.

19 A Okay. The number -- and this is using my mind
20 to the best recollection -- was, I believe, a community
21 number, if you will. I don't remember the circumstances
22 of where Dennis was cleared or not cleared. I came over
23 and got registered first, and so I was given this number.
24 Although he handled the accounts, I believe that the under-
25 standing, at least my understanding with the firm, was that

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Brainard-cross

78

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2 I was to be paid \$3000, and then a 10 per cent override in the
3 office, even though the trades were done in a pool, if you
4 will. So what went into that particular account was
5 analogous to a house account is the way I would describe
6 it.

7 THE COURT: You mean anybody in the office could
8 put down the No. 40. Is that what you are telling us?

9 THE WITNESS: Yes, sir. Well, the only --

10 THE COURT: You were the only registered rep there
11 at the time; is that your recollection?

12 THE WITNESS: No, there was another man who was
13 registered, Dennis McNell, who used the same number is what
14 I am saying.

15 THE COURT: But he did not have a different number
16 although he was registered.

17 THE WITNESS: I don't know what the status of
18 his registration was, inasmuch as he had just come over from
19 another firm.

20 THE COURT: Did the people out in Des Moines
21 know this? That anybody could write down this number?

22 THE WITNESS: Yes, sir. It was a pool number.

23 THE COURT: That was made in arrangements with
24 the people in Des Moines?

25 THE WITNESS: That was my understanding, yes, sir.

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Brainard-cross

79

1 WCS Brainard-cross 79
2 THE COURT: Whom did you have that understanding
3 with?

4 THE WITNESS: My boss who was Mr. Cornelison and
5 Mr. Boesel.

6 Q Just to quickly finish with the document, do you
7 have any recollection of the transaction which Exhibit C
8 for identification purports to describe?

9 A Again I cannot remember exactly. I assume
10 they did the trade if there is the ticket. There were
11 quite a lot of trades that were being done at that time.

12 THE COURT: We will take our luncheon recess now
13 until 2.15. Don't talk about the case, don't let anybody
14 talk about it with you. Have a nice lunch. Keep an open
15 mind. Wait until you hear it all.

16 (Luncheon recess.)

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Brainard-cross

81

1 but the business that he conducted was done in this 40
2 account. So from that standpoint he would have, let's
3 say, Kingswood Growth Fund as an account, he would get the
4 orders and put that number on it.
5

6 Q Who would have been credited with the commission
7 on those Kingswood transactions had they not been denied by
8 the customer and had a commission been payable?

9 A Mr. McNell would.

10 Q How would the firm in Des Moines have distinguish-
11 ed between the No. 40 transactions that were Mr. McNell's
12 and the No. 40 transactions that were yours?

13 A Because they had a list of his accounts. The
14 arrangement that I had with Des Moines was indeed to do
15 commission business, but my compensation was a salary plus
16 a 10 per cent override on the production of the office.
17 We submitted to Des Moines lists of whatever the particular
18 accounts were, and I think in this particular case I am sure
19 Mr. Cornelison and Mr. Boesel were aware of the fact that
20 this particular account was designated as Mr. McNell's
21 account, since he had had a past and continuing relationship
22 with the account.

23 Q What was your salary, Mr. Brainard?

24 A \$3000 a month.

25 Q The fact is you were only paid \$1500 a month,

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Brainard-cross

82

1 weren't you?

2
3 A \$1500 a month? No, I was paid \$3000 a month,
4 and then subsequently I was paid less and I asked why
5 and then, following that, they closed the office.

6 THE COURT: How many months were you paid \$3000?

7 THE WITNESS: I don't have the stubs with me,
8 sir, but I would say it was probably three. April, May,
9 June, July -- maybe four -- and then things deteriorated.

10 Q Mr. Brainard, you testified that you understood
11 that on the basis of what was said in your presence in
12 Des Moines that Mr. Campbell was employed for at least a
13 year. Is that correct?

14 A Yes, sir.

15 Q Is that the substance of what was said? You
16 were employed for at least a year, or was there a definite
17 term, or how was it put?

18 A Well, the proposition was put forward that there
19 was this empty office in New York and they wanted to build
20 up their office.

21 THE COURT: Who put forward, who was there, who
22 said what? That is what we would like to know.

23 THE WITNESS: All right. Specifically, when
24 I first went up to R. G. Dickenson's office in New York
25 City, I met Mr. Cornelison, who at that time had one

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Brainard-cross

83

1 registered rep in the office. I was asked to come to
2 Des Moines to help begin to develop an institutional
3 office, principally using the syndications that were avail-
4 able at that time.
5

6 My initial discussion, which included Mr.
7 Dickenson, Mr. Cornelison, Mr. Doesel, was "How long is it
8 going to take?"

9 THE COURT: What were these gentlemen? What
10 was their office?

11 THE WITNESS: Pardon me, sir?

12 THE COURT: What was Cornelison, Boesel, who were
13 all these people? What was their office in the company?

14 THE WITNESS: R. G. Dickenson was the firm.
15 Mr. Dickenson is the chairman of the board.

16 THE COURT: Was the chairman of the board.

17 THE WITNESS: Yes, sir.

18 THE COURT: Does he hold any office other than
19 that?

20 THE WITNESS: Not that I am aware of.

21 THE COURT: Who was Boesel?

22 THE WITNESS: Mr. Boesel is the president, and
23 Mr. Cornelison is in charge of all the offices.

24 THE COURT: What was his title?

25 THE WITNESS: Vice-president, I guess.

1 WCS

Brainard-cross

2 THE COURT: Now tell us what was said.

3 THE WITNESS: All right. And the concept was
4 to develop --

5 THE COURT: Not the concept. What was said?

6 THE WITNESS: I was to develop an office in
7 New York.8 THE COURT: Who said this? Give us as best
9 you can recall, Mr. Brainard, the conversation, so that the
10 jury can draw conclusions from what was said. We are not
11 interested in your conclusions.12 THE WITNESS: All right. Mr. Boesel and Mr.
13 Cornelison offered me a position, giving me the opportunity
14 to build a New York office for them.15 THE COURT: I am sure that is not what they said
16 to you. Tell us what they said. Who said it?

17 THE WITNESS: Mr. Cornelison and Mr. Boesel.

18 THE COURT: Both said it?

19 THE WITNESS: Yes, sir.

20 THE COURT: In chorus?

21 THE WITNESS: Well, Mr. Cornelison, when I first
22 met him, requested that I go out to Des Moines, Iowa, to
23 meet Mr. Dickenson and Mr. Boesel.12 24 THE COURT: All right. Tell the jury. Tell
25 them the conversation, and separate it.

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Brainard-cross

85

1 THE WITNESS: All right.

2 I then had a specific conversation with Mr.
3 Boesel and Mr. Dickenson and Mr. Cornelison, all three
4 gentlemen were present in Mr. Dickenson's office. I was
5 asked the question, "How long will it take to build this
6 office?"

7 THE COURT: Who asked it?

8 THE WITNESS: Mr. Dickenson. I replied that
9 it would take, in my opinion, 18 months.

10 Given this set of circumstances, there is no
11 way that I would take a position or I doubt Mr. Campbell --

12 THE COURT: Strike it out.

13 Did you say that, "Given this set of circum-
14 stances, there is no way I would take a position"? Is that
15 what you said?

16 THE WITNESS: No, I took a position --

17 THE COURT: Tell us the conversation, please,
18 Mr. Brainard. That is what we are interested in, not what
19 you would do or not what you were thinking or not what was
20 going on in your mind or your opinions or your conclusions.
21 We want the facts. That is what we are here to try to
22 get, and that depends on what was said and who said it.

23 THE WITNESS: To the best of my ability that I
24 recollect, I said that I wanted to be employed for one
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Brainard-cross

86

1 year. On the ride back to the airport with Mr. Boesel,
2 in Mr. Boesel's car, we discussed my compensation for that
3 period of time, which was to be \$3000 a month plus 10 per
4 cent override.
5

6 Subsequently, when Mr. Campbell and I went back
7 to Des Moines, approximately a month later, there was a
8 similar discussion between Mr. Campbell, Mr. Dickenson,
9 Mr. Cornelison, Mr. Boesel, at which I was present. I did
10 not hire Mr. Campbell, they hired Mr. Campbell, and they
11 made the arrangements with Mr. Campbell.

12 THE COURT: Were you present when they made them?

13 THE WITNESS: I was present at some of the meet-
14 ings, yes, sir.

15 THE COURT: What was said in your presence?
16 That is what we want.

17 THE WITNESS: That Mr. Campbell would --

18 THE COURT: Who said it?

19 THE WITNESS: I can't remember exactly, but it
20 would probably be Mr. Boesel, who was the principal speaker.

21 THE COURT: Strike it out. I am not concerned
22 with "probably." We cannot guess here. This is a court-
23 room.

24 THE WITNESS: Okay.

25 Q Regardless of who said it, what was said relative

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Brainard-cross

87

1 to the term of Mr. Campbell's employment?

2 A It was stated that he would be employed for a
3 year at \$2500 a month.

4 Q And not at least a year?

5 A It was my understanding that he would -- yes,
6 at least a year, because we are talking about an 18-month
7 project, you know. I had hoped that it would be a lot
8 longer.
9

10 Q I am not trying to harass you. Was it stated
11 in your presence that Mr. Campbell would be employed for
12 18 months?

13 A No.

14 Q What was stated in your presence?

15 A That he would be employed for a year at \$2500 a
16 month, and then after that we would presumably see what
17 happened in terms of the office if we did a good job.

18 Q Wouldn't Mr. Campbell say that is six months too
19 short, I cannot be in the office for a year, with only a
20 guarantee of a year?

21 A I can't recall what Mr. Campbell said.

22 Q Why did you give Mr. Campbell a note for \$7500
23 prior to his loaning the \$15,000, as you say he did, to
24 R. G. Dickenson?

25 A As an act of good faith and to show him that I

1 WCS

2 had confidence in Mr. Dickenson and the organization.
3 Because he was doing it as an act of faith.

4 Q In other words --

5 A It was a symbolic gesture.

6 Q Right. I am just interested in what it was
7 symbolic of. What you were saying to Mr. Campbell was
8 that if the firm did not repay him, you would pick up half
9 of it; is that correct?

10 A What I was saying to Mr. Campbell was this:

11 He had to go to the U. S. Trust Company and
12 borrow that money, which obligated him for the whole
13 amount. As a symbolic gesture, as a friend, between us,
14 I felt that since we were both going to work together and
15 try to develop this office, that he was making a good
16 gesture, I also would make a gesture of support to him.

17 Q Did he say anything to you in connection with
18 this about his confidence or lack of confidence in the
19 willingness of R. G. Dickenson to repay him?

20 A No, he didn't. I think that we took R. G.
21 Dickenson at their word.

22 Q When you say you think, did M.r Campbell indicate
23 to you that he believed that he would be repaid by R. G.
24 Dickenson?

25 A Yes, sir.

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Campbell-direct

THE COURT: How long have you lived there?

THE WITNESS: About 20 years

MR. FRIEDBERG: Shall I go on?

THE COURT: We will talk about it later.

Do I understand the defendants are all from Iowa?

MR. FRIEDBERG: That is correct, your Honor.

Q Did there come a time that you met with the defendants?

A Yes.

Q Could you fix a date?

A Yes. It was around the 26th of April, '72.

Q Could you tell us briefly what transpired at that meeting and who was present and who said what to whom?

A Well, there were several meetings. We went out, John Brainard and I went out to Des Moines on a Sunday night, I believe, and were met by Mike Cornelison and taken to dinner and then put in a hotel for the night. The next day we went down to R.G. Dickinson's office in downtown Des Moines and had meetings with Mr. Boesel, Mr. Cornelison, and Mr. Dickenson, some and -- one or others, you know, to discuss my possibly going into the employ of R.G. Dickenson.

I had been approached by Mr. Brainard, who

1 wcp3 Campbell-direct

2 had been a personal friend of mine, about the possibility
3 of going into this venture, and for that reason went out
4 to Des Moines with him to meet these people and discuss
5 my possible employment.

6 As I believe Mr. Brainard said, they had a
7 New York office here and were looking to increase their
8 business here in terms of what is called institutional
9 sales or selling to major banks and so on and so forth.

10 It is a very difficult enterprise to begin
11 with nothing and do in a short period of time, so I said
12 I thought we needed at least a year to do it, which we
13 agreed to, and that I would request a guarantee or salary
14 or what have you of \$2500 a month for that period, which
15 was again agreed to.

16 I was hired out there at that time, filled out
17 the forms and so forth, and came back to New York to go to
18 work for Dickinson.

19 Q Was it your understanding at that time, if I
20 understand your testimony, that you were hired for one
21 year at a salary of \$2500 a month?

22 A Yes. Guarantee or salary.

23 Q Do you have a recollection as to how much
24 money you were paid by R.G. Dickenson during the period of
25 your employment with them?

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Campbell-direct

A Yes. It was a gross amount of \$12,000, I believe.

Q And that would have been from approximately when to when?

A Approximately April -- say the 1st of May until the end of October.

Q What happened at the end of October?

A They closed the New York office.

Q Did anybody speak to you about that?

A Mr. Cornelison.

Q What did he say to you at that time and what did you say to him?

A Well, he said that they were closing the New York office and there would obviously be no longer any place of business in New York and that therefore the people in New York were out of a job, in essence.

Q Did he offer any other employment opportunity?

A No.

Q I would like you to look at Exhibit 5, Plaintiff's Exhibit 5. You should find it in front of you.

A Yes.

Q Is that in substance a letter of resignation that you sent to --

A Wait a minute.

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wcp5

Campbell-direct

Q Did I pick the wrong number?

A I think so.

Q The black marking on it is 5.

A All right.

Q Is that your signature on Exhibit 5?

A Yes.

Q Would you tell us the circumstances surrounding your preparation and execution of that letter?

A Yes. In the securities business, when one transfers from one firm to another, you have to fill out a bunch of forms that would indicate that you have left one firm to go to another firm. It has become a matter of practice, when one leaves a firm for any reason, either he is fired or he leaves of his own volition or whatever, that you write a letter of resignation, because it speeds up the reregistration process, because this goes on file, I believe, with the New York Stock Exchange or the NASD. In other words, there are no difficulties involved. So in the common course of practice I did it.

Q At the time that you gave that letter was there any question in your mind as to whether or not you had been fired?

A No.

Q What did you believe then?

wcp6

Campbell-direct

1 A That I had been fired.

2 Q Referring to the transaction that took place
3 with the Mutual Oil stock, I would like not to go through
4 that testimony again. I think we have heard that from
5 enough witnesses. Were you present when Mr. Brainard
6 testified and when Mr. Cornelison testified as to what
7 took place during that transaction?
8

9 A Yes.

10 MR. FRIEDBERG: With the permission of the
11 Court and counsel, I would like to lead insofar as:

12 Q Is there anything in that testimony that is
13 inconsistent with your thinking as to whether or not you
14 actually made that purchase on behalf of the customer?

15 A No, I never made the purchase.

16 Q Was it your account?

17 A No.

18 Q Would you have gotten a commission on that
19 trade --

20 A No.

21 Q -- if you had been licensed?

22 A No.

23 Q Were you licensed at that time?

24 A No.

25 Q Could you have made that transaction, that

wcp7

Campbell-direct

purchase?

A No.

Q Did you in fact pay \$15,000 to R.G. Dickinson?

A Yes.

Q What were the circumstances of your recollection of the giving of the \$15,000 by you if you can tell us?

A Well, that in effect the company, the firm, was looking to the New York office to make up for the loss in this transaction. Mr. McNell flatly refused to do it. Mr. Brainard did not have the money or the access to the money to be able to do it. So, being the only one left, I was the logical third party to ask. I was told by Mr. Boesel personally that this would be repaid either in terms of increasing my commission percentage when I got registered or over in a bonus or in some way it would be repaid and that they were men of good faith. And the securities business is done on one's word. And that if I would pay them the money, that I would in one way or another get it back. Also I wanted to make sure that the office would remain intact and it would continue and so on and so forth. So that again was guaranteed to me verbally.

So after a lot of soul-searching I decided

wcp8

Campbell-direct

then in the best interests of the office and myself,
everybody else, I would take a chance and do it. So I
paid them \$15,000, the loan of \$15,000. ✓

Q Did you get any of it back?

A No.

Q Did you ask for it back?

A Yes.

Q I would like to show Plaintiff's Exhibit 17
for identification.

Is that your copy of a letter?

A Yes.

Q Did you maintain that copy in your files?

A Yes.

Q Did you indeed address that letter to the
president of Dickenson, Mr. Boesel?

A Yes.

Q Was that on or about the date that appears on
there, being November 30, 1972?

A Yes.

Q Did you place that in an envelope?

A Yes.

Q Who addressed the envelope?

A I did.

Q Where was it addressed to?

- 1 wcp9 Campbell-direct
- 2 A Where was it what?
- 3 Q Where was the envelope addressed to?
- 4 A To Des Moines.
- 5 Q To the named addressee there?
- 6 A Yes, right.
- 7 Q And you sent that by certified mail, did you?
- 8 A Yes.
- 9 Q Did you prepare the pink slip that is in the
- 10 corner of that file?
- 11 A Yes.
- 12 Q Did you in fact get that pink slip back from a
- 13 postal authority?
- 14 A Yes.
- 15 MR. FRIEDBERG: I would like to offer that in
- 16 evidence.
- 17 MR. HAWKINS: May I quickly examine it?
- 18 No objection, your Honor.
- 19 THE COURT: Received.
- 20 (Plaintiff's Exhibit 17 received in
- 21 evidence.)
- 22 Q Did you make demand for the repayment of the
- 23 \$15,000 in writing?
- 24 A Yes.
- 25 Q Was it by method of Exhibit 17 and Exhibit No. 6?

xx

1 wcp10 Campbell-direct

2 A Yes.

3 Q Did you ever get any response from either of
4 those communications from the defendants?

5 A Certainly not from the second one. I don't
6 remember on the first. I think it was some phone con-
7 versations after this first letter. That was before the
8 office was closed.

9 Q What was said to you at that conversation and
10 what did you say to whom?

11 A Mr. Boesel. I asked him again for the money.
12 He said that the firm was not going to pay it back to me
13 and that the only recourse I would have would be here.

14 Q Referring to the counterclaim in this matter,
15 and then I will be finished with my direct testimony:
16 are you presently holding a typewriter that belongs to
17 R.G. Dickenson & Company?

18 A Yes.

19 Q Are you willing to let R.G. Dickenson have their
20 typewriter back?

21 A Yes.

22 Q Is it correct to say that you only wanted them
23 to pay the cost of crating it and shipping it so that it
24 would not be damaged and have it insured?

25 A Yes.

wcpl6

Campbell-cross

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Q So you were underpaid during the time that you were at R.G. Dickenson?

A That's correct.

Q Did you ever bring that to the attention of anybody in R.G. Dickenson?

A Yes, I did.

Q In writing?

A No.

Q But you did write a couple of letters, you say, after you were fired, as you say; isn't that right?

A Yes.

Q You said the money was owed you, is that correct?

A That's correct.

Q Why didn't you mention this money?

A Why didn't I mention this money? Because at the time I didn't know it was collectible.

Q You did not know that the \$3000 that you had not been paid for the six months you had worked was collectible?

A Not until I talked to Mr. Friedberg.

Q What made you think the \$15,000 was collectible before you talked to Mr. Friedberg?

A Because it was a loan.

Q Has it always been your recollection of what

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wcpl9

Campbell-cross

- Q You didn't know his brother?
- A No.
- Q Do you know his brother now?
- A I met him once.
- Q What is his name?
- A Tom.
- Q Tom?
- A Tom.
- Q Who is Barry McNell?
- A A cousin.
- Q His cousin?
- A Yes.
- Q Oh, cousin. You knew Barry McNell quite well,
right?
- A I knew him.
- Q You listed him as a reference in your applica-
tion to R.G. Dickenson, did you not?
- A That is correct.
- Q You borrowed the \$15,000 which you paid to R.G.
Dickenson & Co. from a bank, is that correct?
- A Yes.
- Q Did you pay interest to the bank?
- A Yes.
- Q Did the company agree to pay you interest?

- 1 wcp20 Campbell-cross
- 2 A No. I don't believe so.
- 3 Q Did you discuss the matter of interest with the
- 4 company?
- 5 A Yes.
- 6 Q What was the conversation?
- 7 A The conversation was in essence that I wanted
- 8 some assurance that I get the \$15,000 back before I in
- 9 fact gave it to them. I was told that they were, again,
- 10 men of their words, don't worry about it, you'll get it
- 11 back, you'll get it back and then some.
- 12 Q I asked what was the conversation about interest.
- 13 A Oh, I don't recall specifically.
- 14 Q Do you recall there was any conversation about
- 15 interest?
- 16 A Not specifically, no.
- 17 Q Do you recall generally?
- 18 A It would just be an assumption if I said so.
- 19 Q Did anybody say to you they would pay you
- 20 interest?
- 21 A No.
- 22 Q R.G. Dickenson & Co. knew you were borrowing
- 23 the money from the bank, did they not?
- 24 A I think so, yes.
- 25 Q Specifically Mr. Cornelison knew it, didn't he?

1 wcp21

Campbell-cross

2 A I believe so.

3 Q Didn't you go to the bank with him?

4 A Not to borrow the money.

5 Q Didn't you go to the bank with him and attempt
6 to borrow the money, and the person you wanted to see was
7 not there?

8 A No.

9 Q That is not true?

10 A I don't believe so.

11 Q Do you ever recall going to a bank with Mr.
12 Cornelison in July, 1972?

13 A Yes, but not to borrow money.

14 Q What did you go there for?

15 A To open an account for R.G. Dickenson.

16 Q Wasn't the purpose of that account to be the
17 place where the money would be put?

18 A No.

19 Q That you were going to pay R.G. Dickenson & Co.?

20 A No.

21 Q What money was going to go into that account?

22 A Customers' money.

23 Q What bank was that?

24 A U.S. Trust.

25 Q Do you recall the account number?

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wcp23

Campbell-cross

A He was not in a financial condition to go and
be able to borrow \$15,000.

Q Did you put up collateral for the money?

A No.

Q It was loaned to you on your credit rating?

A Yes.

Q Had you been acquainted before with the person
you dealt with at the bank?

A Yes.

Q Specifically who was it on behalf of R.G.
Dickenson & Co. who said the firm would repay you the
money?

A Mr. Boesel.

Q Only Mr. Boesel, or did somebody say it, too?

A It is possible somebody else said it. The only
one I could really be positive of was Boesel.

Q Was that on one occasion?

A Several.

Q Several occasions.

A Yes.

Q Face to face?

A Over the telephone.

Q Did he give you any reason why he wanted you to
pay the firm the \$15,000 of which the firm would then pay

1 wcp24 Campbell-cross
2 you back?

3 A As I believe Mr. Brainard testified, he had
4 told --

5 Q I am talking about what Mr. Boesel said to you.

6 A Said to me?

7 Q Was Mr. Brainard on the same telephone conver-
8 sation?

9 A No.

10 Q Please tell me what Mr. Boesel said to you.

11 A Well, something to the effect that in general
12 money was tight and it was rather a large loss, and it
13 put the New York office in a definite position, and so
14 forth; and that if and as things got better or improved
15 or whenever time went on, again I would either get paid
16 out of an increase in commissions or in terms of a bonus,
17 and so forth.

18 Q You would get paid only if and as things got
19 better?

20 A No, not only if and as. But there was an
21 implication that the firm --

22 Q I don't want the implication. What did he say
23 to you?

24 A That the firm in essence wanted the money now
25 and I would get it back later.

1 wcp25

Campbell-cross

2 Q Not if and as, but you would definitely get it
3 back later?

4 A Yes.

5 Q Was there any discussion as to an outside date
6 when you would get it back?

7 A No.

8 Q Was there any discussion as to a period of time
9 during which you could not expect to get it back?

10 A No.

11 Q Was there any discussion between you as to the
12 fact that you would have to borrow the money to pay them?

13 A Yes.

14 Q You told him that?

15 A Yes.

16 Q Did you tell him you had to pay interest?

17 A I assume so.

18 Q You assume you told him that. Do you remember
19 what he said?

20 A No.

21 Q Does that refresh your recollection at all as
22 to anything Mr. Boesel might have said to you about
23 interest, about the firm paying you interest?

24 A Concerning interest? No.

25 Q You don't remember whether that was discussed

1 wcp27 Campbell-redirect

2 Q Was any of it repaid?

3 A No.

4 MR. FRIEDBERG: I have no further questions,
5 and, your Honor, I have no further witnesses.

6 THE COURT: Do you rest?

7 MR. FRIEDBERG: That is the plaintiff's case,
8 yes, sir.

9 THE COURT: Any further cross-examination?

10 MR. HAWKINS: No, your Honor.

11 THE COURT: All right. The jury may take a
12 short recess.

13 (The jury left the courtroom.)

14 THE COURT: At this point you make motions.

15 MR. HAWKINS: Yes, your Honor. I move for a
16 dismissal of the complaint as against the two individual
17 defendants on the grounds there is no evidence whatever
18 to link them with any --

16 19 THE COURT: Granted. What about the other?

20 MR. HAWKINS: I will move for a directed
21 verdict, your Honor, on the first count of the complaint
22 on the ground that he resigned, and on the second count
23 of the complaint on the ground that the evidence of a
24 loan is simply incredible.

25 THE COURT: How do you establish your case in

1 wcp28

2 light of the letter of resignation on your first count?

3 MR. FRIEDBERG: Your Honor, you have had
4 testimony that it is done as a matter of convenience for
5 re-registration.

6 THE COURT: So what?

7 MR. FRIEDBERG: You have testimony that it was
8 his, the plaintiff's, impression that he was fired.
9 You have testimony from Mr. Brainard that plaintiff was
10 indeed fired, the office was closed, there was no office
11 for him to go to, they did not even offer him an opportunity
12 to go to Des Moines so that he could work for the company
13 in Des Moines in continuance of his contract. His office
14 no longer existed. I think we have had certain adequate
15 testimony to the effect --

16 THE COURT: We will let it go to the jury. I
17 will reserve decision. But I think it is made out of whole
18 cloth, frankly.

19 What about your second one?

20 MR. FRIEDBERG: We have testimony that he gave
21 \$15,000 to the defendants with the clear understanding that
22 it would be repaid to him. The definition of a loan,
23 as I have cited in my brief out of Black's Law Dictionary,
24 is the giving of something of value with a promise that
25 it is going to be repaid. It is his testimony that it

1 wcp29

2 was to be repaid, it is Brainard who was present, that it
3 is his testimony that it was to be repaid. It never
4 was any obligation that arose for him to have paid the
5 initial \$15,000, because he was an unlicensed member
6 of the company.

7 THE COURT: I might ask you what this case is
8 doing in this courthouse. There isn't a single resident
9 in the City of New York or in the Southern District of
10 New York.

11 MR. FRIEDBERG: Your Honor, we brought claims
12 under the 1934 Act which --

13 THE COURT: There are no claims under the 1934
14 Act.

15 MR. FRIEDBERG: The situs of where the company
16 operated was in the Southern District of New York.

17 THE COURT: The claims under the 1934 Act are
18 absolutely without basis. There is no claim here under
19 the Securities Act of any kind, shape or form, and there
20 never has been.

21 MR. FRIEDBERG: Your Honor, the \$15,000 was
22 never reflected on the financial statements.

23 THE COURT: If it was not a loan as the
24 defendants claim, there is no need to reflect it.

25 MR. FRIEDBERG: I might respectfully suggest

1 wcp30

2 when a pleading is drafted and an allegation is made, the
3 test respectfully of whether or not the Act applies is
4 whether or not it applies to that allegation.

5 THE COURT: It is totally immaterial whether the
6 Act applied or whether it does not or whether that is a
7 loan. The venue is something that can be waived, and I
8 guess your defendants waived it by not moving to change it,
9 throw it out of this court, long ago. But it never
10 belonged in this courthouse. It should have been tried
11 in Connecticut or out in Iowa. We have enough work without
12 borrowing it from the sticks.

13 All right, we will let the jury pass on it.
14 I am going to send special interrogatories to the jury,
15 maybe. I have not heard the defense yet.

16 MR.FRIEDBERG: Thank you.

17 (Recess.)

18 (Jury present.)

19 MR. HAWKINS: Mr. Dickenson, would you take the
20 stand.

21

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1 wcp31

2 ROBERT G. DICKENSON, residing in Des
3 Moines, Iowa, called as a witness on behalf of the
4 defendant, being first duly sworn, testified as
5 follows:

6 THE WITNESS: I am chairman of the board of R.G.
7 Dickenson & Company.

8 DIRECT EXAMINATION

9 BY MR. HAWKINS:

10 Q Mr. Dickenson, I want to show you two what
11 purport to be confirmation slips which have been marked
12 for identification as Exhibits B and C. I ask you if
13 you can identify those slips as relating to transactions
14 that actually occurred.

15 A The confirmation slip marked B is for the
16 purchase of 700 Albany International shares for Kingswood
17 Growth Fund.

18 The confirmation slip marked Exhibit C is for
19 a 2500-share purchase of Columbia Gas System, Inc., for
20 Kingswood Growth Fund.

21 THE COURT: Now could you answer the question?
22 Read the question, please.

23 (Question read.)

24 A Yes, I can.

25 Q Were the two transactions described in these

1 wcp32 Dickenson-direct

2 cancelled because the customer denied having authorized
3 the transactions?

4 A Yes, to the best of my recollection.

5 Q What is the policy of your firm, Mr. Dickenson,
6 when an order is put through which the customer denies as
7 having not been authorized by him?

8 A The responsibility of the registered representa-
9 tive is that it is his responsibility on every error.
10 It is so stated in the operations procedural manual of
11 R.G. Dickenson & Company and also the compliance manual
12 of R.G. Dickenson & Company. In the compliance manual it
13 is located in four places; in the manual of standard operating
14 procedure it is indicated in one place. It is also
15 required that the registered representative read the
16 compliance manual not once but to bone up on it probably
17 at least three times a year.

18 THE COURT: Are these what are known as fails
19 in the trade?

20 THE WITNESS: No, they are not, your Honor.

21 Q Who was the registered representative involved
22 in these three Kingswood transactions, if you know?

23 A I do know it was John Brainard.

24 Q Did the firm hold Mr. Campbell responsible for
25 the loss caused by the Kingswood Mutual trade which

1 wcp33

Dickenson-direct

2 resulted in a loss of \$15,000?

3 A No, we did not.

4 Q Did you hold Mr. Brainard responsible?

5 A Yes, we did.

6 Q Did you ask Mr. Campbell to reimburse the firm
7 for the loss?

8 A No, we asked John Brainard to reimburse Mr.
9 Campbell for the loss.

10 THE COURT: When you say "we," who did it, who
11 did it?

12 THE WITNESS: The firm.

13 THE COURT: Who in the firm?

14 THE WITNESS: The officers --

15 THE COURT: The firm only acts through --

16 THE WITNESS: The officers of R.G. Dickenson &
17 Company, which consists of myself, Mr. Boesel as president,
18 Mr. Mike Cornelison as sales manager.

19 THE COURT: Who asked this?

20 THE WITNESS: I asked this.

21 THE COURT: To whom did you speak?

22 THE WITNESS: Specifically to John Brainard on
23 the telephone via Des Moines to New York. And I recall
24 specifically his comments.

25 THE COURT: What did he say?

wcp34

Dickenson-direct

1 THE WITNESS: Mr. Brainard said, "You know,
2 since we share in that account" -- when he said "we,"
3 he meant Dennis McNell and myself; that No. 40 account was
4 John Brainard as the RR -- registered representative.
5 They shared in the commissions of that account. It was
6 their intention to make that a team account of three people
7 to the team: Dennis McNell, John Brainard and Paul Camp-
8 bell.
9

10 Paul Campbell at the time was not a registered
11 rep in the position where he could solicit orders. At
12 the time John Brainard had no credit rating whatsoever.
13 He had creditors that were calling him for back-due bills.
14 His statement to me on the telephone was that Paul Campbell's
15 stepfather was an officer at the U.S. Trust Company, he
16 would borrow it, they in turn would reimburse Paul or
17 give him notes to that effect. Paul Campbell, it is
18 my understanding from John Brainard, that Paul made the
19 loan, John Brainard gave him a note for half of it, and
20 the agreement was between those two.

21 Q Did you participate in a decision to close the
22 New York office in or about October, 1972?

23 A Yes, I did.

24 Q Was any decision made as to what would be done
25 with Mr. Campbell?

wcp37

Dickenson-cross

Q Then perhaps you can correct me and tell me where I am wrong.

A Because during that time he was being paid \$2000 per month to train to be a registered representative. Part of that training program is the office procedural manual and the compliance manual, and to be very knowledgeable in the rules and regulations thereof.

Q But laying that aside for the moment, he could not have effected any transactions that would be covered by those rules, isn't that correct?

A Transactions, yes, counsellor, but there are other portions of it that he can, though he still has to comply with it.

Q It was interesting on your examination that you said that the company did not hold Mr. Campbell responsible for the loss in the Mutual Oil. Was that a correct reference to what you said?

A That is correct. We did not hold Mr. Campbell. We held Mr. Brainard accountable for that.

Q But you knowledgeably took Mr. Campbell's \$15,000 to cover that loss, didn't you?

A Through the agreement of Mr. Brainard and Mr. Campbell.

Q But you knew it was Campbell's money, is that

wcp38

Dickenson-cross

1
2 correct?

3 A We knew that the -- I knew that the loan was
4 made on behalf of Paul Campbell.

5 Q Yes, because he signed a note that said that
6 he had to pay back \$15,000?

7 A Right.

8 Q Is that correct? Is that correct?

9 A I didn't see that note. Only from hearsay, from
10 him.

11 Q Do you have direct knowledge of the fact that
12 he did in fact indeed borrow money from United States
13 Trust?

14 A No, I do not, only from what John Brainard told
15 me.

16 Q But again it was not Campbell's responsibility,
17 but you were willing to take his money; is that not correct?

18 A John Brainard borrowed it from Paul Campbell
19 or Paul Campbell from the U.S. Trust via John Brainard.

20 Q That is interesting, because I have not heard
21 any testimony to the effect that Mr. Brainard borrowed
22 money from anybody. Where does that come from?

23 A Witness the note which Brainard signed to
24 Campbell, which is in evidence.

25 Q That was a note for \$7500, is that right?

1 wcp40 Dickenson-cross

2 Q Perhaps if you look on that statement you will
3 find reference to a \$15,000 transaction.

4 Do you know if that \$15,000 transaction on
5 there refers to Mr. Campbell giving \$15,000 to R.G.
6 Dickenson?

7 A I do not.

8 Q You testified that from your knowledge at the
9 end of October, 1972, the New York office was closed.

10 A That is correct.

11 Q Did you in fact at that time have a conversation
12 with Mr. Campbell?

13 A I am sure I did, but I don't recall. We probably
14 had many conversations, or let me say a number of con-
15 versations over different matters. But I do not recall
16 specifically what they might have been at this time.

17 Q Did you ever say to Mr. Campbell, in words or
18 substance, of course, "We are closing down the New York
19 office but we want you to stay on board"?

20 A I just testified I do not recall what was said
21 in any conversation during that period.

22 Q Were you aware that Mr. Campbell made demand
23 for the return of this \$15,000?

24 A Some time after October 31 it was mentioned that
25 he had called -- Mr. Campbell had called our president,

wcp

Dickenson-cross

Mr. Boesel.

Q Is it a fact that you never saw a copy of the letters which are Exhibit 17 and Exhibit 6?

A This is black 6 and black 17?

Q Yes, right.

A Exhibit 6, no, I have never seen that; and the other, sir, 17?

Q 17, right.

A Blue 17.

Q No, we did all of that in -- it is the one with the pink. Right. That is correct.

A I have never seen that letter before today.

Q Before the service of the summons and complaint in this action did anybody in your company make you aware of the fact that Mr. Campbell was asking for his money back?

A I said after October 30, 1972, some time after that, Mr. Boesel had mentioned that Mr. Campbell had called him asking for his money back.

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Dickenson-cross

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Q And you did not give it back.

A I was absolutely shocked that he would even call, because it was not a loan, it was an error for that account, for the John Brainard account, which I assumed -- which I felt he had loaned him, and there was no way he was going to get it back.

Q And you had no proof of the fact that this was a loan to Brainard at all, did you?

A Except Brainard said so.

Q I would wonder why, if Brainard said he had loaned it, he only gave back a note for \$7500.

A That was, I felt, something between Mr. Campbell and Mr. Brainard.

THE COURT: Is Mr. Boesel still in your company?

THE WITNESS: Yes, he is, your Honor.

Q Is it your recollection the period of time that Campbell did work for Dickenson that he was paid \$12,000?

A Yes, that is correct.

MR. FRIEDBERG: I have no further questions.

THE COURT: You are excused.

(Witness excused.)

MR. HAWKINS: I call Mr. Cornelison just very briefly.

--

1 cs2

2 MAURICE B. CORNELISON, recalled
3 as a witness by the defendant and testified further as
4 follows:

5 THE COURT: You are still under oath, Mr.
6 Cornelison.

7 Go ahead.

8 DIRECT EXAMINATION

9 BY MR. HAWKINS:

10 Q Mr. Cornelison, you heard the testimony today
11 about the typewriter that was in the office?

12 A Yes.

13 Q Did you have a conversation with Mr. Campbell
14 about that typewriter?

15 A Yes.

16 Q In August 1972?

17 A I would assume -- yes, I am sure in August.

18 Q What did you say to him about the typewriter?

19 A I am not sure -- excuse me -- I am not sure, but
20 I recollect what happened. When we moved, which would be
21 after October, when we moved the furniture from New York to
22 Des Moines, we were minus a typewriter. Then is when I
23 got in touch with Mr. Campbell and said, "Where is the type-
24 writer?"

25 He said, "I know where it is, and I can get it."

1 cs3

Cornelison-direct

2

I said, "Get it and deliver it to our office in

3

Des Moines. It should never have left our office in New

4

York."

5

He said, "Well, I don't know how I can pack it."

6

I says, "Take it down to the bus station, put it

7

on a bus, and send it to Des Moines, Iowa. I will pick

8

it up personally myself."

9

I have never -- as he had testified, he still

10

has the typewriter.

11

MR. HAWKINS: Thank you, Mr. Cornelison.

12

(Witness excused.)

13

MR. HAWKINS: Defendant rests, your Honor.

14

THE COURT: The jury may take a short recess.

15

(The jury left the courtroom.)

16

THE COURT: You renew your motion.

17

MR. HAWKINS: I renew my motions for a directed

18

verdict on both counts of the complaint.

19

THE COURT: I will reserve decision. I think

20

this case should go to the jury on special interrogatories.

21

Here are the ones I propose to put. In order to put these,

22

you people will have to agree on what the figures are,

23

depending on what the answers are. I don't think the

24

jury should be burdened with having to work out the arith-

25

metic.

1 WCS

2 truth? Is Brainard telling the truth? Is Dickinson
3 telling the truth? Is Cornelison telling the truth?
4 Mr. Cornelison, when he testified, said yes, we offered him
5 a job for some unspecified period of time. That is my
6 recollection. You may or may not have that recollection.
7 He then later testified something to the effect of payments
8 being made for a six months' period.

9 You have got to assess whether at the time those
10 people were out in Des Moines they struck a bargain. I am
11 going to hire you, you are hired for a year, we are going to
12 pay you \$2500.

13 The second part of our claim is this. I was
14 astounded at the testimony of Mr. Dickenson, because if you
15 recall as I recall he testified Campbell did not owe \$15,000.
16 Well, that is why I was hammering at the point that he was
17 not licensed and he could not have owed the money because
18 he could not have made a securities transaction. And there
19 the chairman of the board, who is the highest officer of
20 that company, said Campbell never owed \$15,000. But he
21 gave it to them. And there isn't a shred of evidence that
22 they did not get the \$15,000, or a shred of evidence that
23 they paid it back.

24 It is in your hands to determine whether or not
25 that company, whose financial statements you will examine,

1 WCS

2 with cash of \$909,000 and accounts receivable of \$1,900,000,
3 is entitled to keep this man's \$15,000 that by their own
4 testimony he never owed.

5 Sure he gave it to them. They were going to
6 fire him. They were going to close his office. That
7 is why he gave it to them. And there was every justifica-
8 tion for it, because he thought it was good. He thought
9 that he was going to invest a year in that company and that
10 this New York branch office was going to make money, and
11 that not only was he going to make back his \$15,000 by
12 showing "Hey, I'll put my money on the line, Dickenson, to
13 show you that I want to run this company with you, I want to
14 be a part of this company, I want to be able to make money
15 with you." And now they say, "My God, he is not entitled
16 to get it back, but he should have sued, he should have
17 said, 'No, no, we had no signed employment contract, I want
18 to sue for everything, all at the same time. I don't want
19 to give you \$15,000.'"

20 That would have been what the defense would try
21 to make you think that Mr. Campbell should have done.

22 I submit that that is wrong. That is wrong,
23 because the man parted with his money. His testimony
24 fits into line with the testimony of the other people who
25 have testified on his behalf, that not only was he entitled

1 WCS

2 to the return of this because it was promised, but, by God,
3 he never even owed it in the first place, how could you
4 come back and let the company say that the company is
5 entitled to keep that money?

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1 wcp7

2 was still with the company. According to the plaintiff,
3 Mr. Boesel was the one that told him this \$15,000 would be
4 paid back. We have not seen Mr. Boesel. Why not?

22 5 You are entitled as a matter of law, if you
6 find that he still is under the control of the company,
7 to conclude that his testimony would be unfavorable to
8 the defendants if he were called.

9 You want also to consider not only what the
10 witness said on the stand but the way he behaved up
11 there. Was the witness giving you straight answers to
12 straight questions? Or was he being evasive? Was he
13 ducking the question? You heard me on a number of
14 occasions tell witnesses to respond to the question.
15 The witness may have been sincerely or honestly confused.
16 People are not used to coming into a courtroom and getting
17 up on the stage here -- it is kind of a frightening ex-
18 perience. You ought to take that into account. But you
19 have got to pierce through all of this and decide whether
20 you are going to believe that witness. How did he impress
21 you? Can you rely on him? Was he giving it to you, as
22 the kids say, like it is? Was he telling it like it is?
23 Was he giving you the truth, the whole truth, and nothing
24 but the truth, or was he dancing around, hiding it, trying
25 to conceal it in some way?

1 wcpl5

2 MR. FRIEDBERG: No exceptions for plaintiff.

3 (At 4.30 p.m. the jury retired to deliberate
4 upon a verdict.)

5 THE COURT: Will you get the exhibits together
6 so we can send them in.

7 (At 4.50 p.m., jury present. Jury roll called;
8 all present.)

9 THE CLERK: Madam Forelady, has the jury agreed
10 upon a verdict? I will read it to you.

11 Did the defendant R.G. Dickenson & Company agree
12 to employ plaintiff for one year at \$2500 a month plus
13 expenses?

14 Answer?

15 THE FORELADY: Yes.

16 THE CLERK: Was plaintiff discharged or did he
17 resign after six months? Discharged or resigned?

18 THE FORELADY: Discharged.

19 THE CLERK: 3. Was the \$15,000 paid by the
20 plaintiff to R.G. Dickenson a loan by plaintiff to R.G.
21 Dickenson?

22 THE FORELADY: Yes.

23 THE CLERK: Did plaintiff convert the type-
24 writer?

25 THE FORELADY: No.

1 wcp16

2 THE CLERK: Ladies and gentlemen of the jury,
3 listen to your verdict as it now stands recorded.

4 Question 1: Yes.

5 Question 2: Discharged.

6 Question 3: Yes.

7 Question 4: No.

8 (Each juror, upon being asked by the clerk
9 "Is that your verdict?", answered in the affirmative.)

10 THE COURT: I want to thank you for the careful
11 attention you gave to this case. I thought you were an
12 unusually good jury and that you paid very strict attention
13 to the testimony and really went about your job in a business
14 like way and decided the case. When you do that, that is
15 all any of us can ask, whatever your decision. I never
16 comment on what I would do if I were on a jury. Frankly,
17 I don't know, because I was not concentrating on what my
18 answer would be to your job. I had my own to think about.

19 Good night. Report to Room 109 in the morning.

20 (The jury left the courtroom.)

21 THE COURT: Before I take the motions I think
22 we ought to make perfectly clear in the record now what
23 this verdict means in dollars and cents. The only item
24 open is the typewriter. Well, we did not convert it, so
25 there is no problem there. No problem. All right.

1 wcp17

2 MR. FRIEDBERG: Your Honor, by the way, for the
3 record, he will still give that typewriter back. All
4 they have to do is pay to crate it. He does not want it.

5 THE COURT: All right. So let us get what the
6 judgment is to be for here, and then the clerk can enter
7 the judgment in due course.

8 MR. FRIEDBERG: The judgment on plaintiff's
9 first claim is for \$18,000, together with interest at the
10 rate of 6 per cent per annum from November 1, 1972.

11 The verdict on plaintiff's second claim is in
12 the sum of \$15,000, with interest at the rate of 7 per
13 cent per annum from July 12, 1972.

14 THE COURT: Do you agree?

15 MR. HAWKINS: Yes, your Honor.

16 THE COURT: Let the clerk enter judgment for
17 those amounts.

18 All right, Mr. Hawkins.

19 MR. HAWKINS: Your Honor, I renew my motions,
20 move for judgment notwithstanding the verdict, dismissing
21 the first and second counts, and in the alternative, if
22 that motion is denied in whole or in part, I move for a
23 new trial on the ground the verdict is against the weight
24 of the evidence.

25 THE COURT: Of course, it is not the Court's

1 wcpl8

2 function to substitute its judgment for that of the jury.

3 There were issues of fact here about which reasonable

4 people could honestly reach different conclusions. The

5 transactions were handled in a very slipshod way. When

6 businessmen do that, they run the risk of having a jury

7 decide what their deals were rather than themselves.

8 I surely cannot say that it was against the

9 weight of the evidence. There was a sharp issue of

10 credibility. The case turned on which witnesses the jury

11 would believe. I think the failure to produce Boesel as a

12 witness was absolutely devastating. I don't see how in

13 the light of plaintiff's testimony that it was Boesel who

14 made the deal on the \$15,000 and no contradiction out of the

15 mouth of Boesel the jury could reach any other result.

16 I think that may also have spilled over into the first

17 cause of action.

18 Also there was strong circumstantial evidence

19 here that this represented quite a venture, to open a New

20 York office. It is highly doubtful, I think, that any

21 responsible person would be likely to embark on such a

22 venture in the competitive securities market of New York

23 on a six months' proposition. That hardly seems time enough

24 to give it a real try, a good-faith effort. I think the

25 plaintiff's version on the employment contract certainly

1 wcp 18a

2 was something the jury could find entirely credible under
3 all the circumstances. So I deny your motion.

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July 3, 1972

I, John E. Brainard II, do owe Paul Campbell Jr.
the sum of \$7,500.00, payable on demand, as of
the date written above.

Signed

John E. Brainard II

Witnessed

James W. Arnold

EXHIBIT A

R. G. DICKINSON & CO.

BER: MIDWEST STOCK EXCHANGE
CHICAGO BOARD OF TRADE
ICAGO MERCANTILE EXCHANGE
7 YORK MERCANTILE EXCHANGE
ORK SUGAR & COFFEE EXCHANGE
W YORK COMMODITY EXCHANGE

ONE BATTERY PARK PLAZA

NEW YORK, N. Y. 10004

(212) 344-5980

Main Office
910 GRAND AVENUE
DES MOINES, IOWA 50309

October 5, 1972

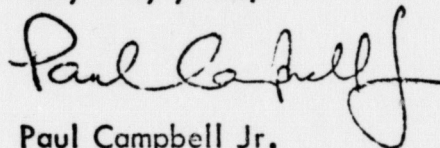
R. G. Dickinson & Co.
910 Grand Avenue
Des Moines, Iowa 50309

Attn: Mr. Robert G. Dickinson

Gentlemen:

Effective October 31, 1972 please accept my resignation
from R. G. Dickinson & Co.

Very truly yours,



Paul Campbell Jr.

EXHIBIT 5

R. G. DICKINSON & CO.

MEMBER: MIDWEST STOCK EXCHANGE
CHICAGO BOARD OF TRADE
CHICAGO MERCANTILE EXCHANGE
NEW YORK MERCANTILE EXCHANGE
NEW YORK SUGAR & COFFEE EXCHANGE
NEW YORK COMMODITY EXCHANGE

ONE BATTERY PARK PLAZA

NEW YORK, N. Y. 10004

(212) 344-5980

Main Office
910 GRAND AVENUE
DES MOINES, IOWA 50309

October 18, 1972

Mr. J. Philip Boesel Jr.
President
R. G. Dickinson & Co.
910 Grand Avenue
Des Moines, Iowa 50309

Dear Phil:

I understand that you and John Brainard had a telephone conversation on Oct. 9 with regard to the \$15,000 owed to me by R. G. Dickinson & Co. As the office is being closed on October 31st, I will be expecting a certified check, payable to me, by that date.

Thanking you in advance, I remain,

Very truly yours,

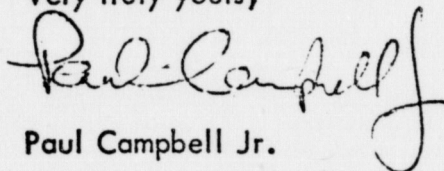

Paul Campbell Jr.

EXHIBIT 6

P. Campbell
Exhibit 17

11/30/72

Mr. Phil Boesel, President
R. G. Dickinson & Co.
910 Grand Ave
Des Moines, Iowa

Dear Phil:

Concerning the \$15,000.00 owed to me by R. G. Dickinson & Co., I have spoken to you on several occasions and have gotten no answer as to what your firm intends to do about repayment of this money. I have also called Bob Dickinson more than once but was unable to talk to him. Based on this response to my request for repayment, I must assume that you do not wish to resolve this matter amicably.

I have no wish to become involved in a fight; however, unless I hear from you within 10 days, I will take whatever actions necessary to effect collection of the \$15,000.00 owed to me by R. G. Dickinson.

Sincerely,

Paul Campbell

Judgment of District Court

The issues in the above entitled action having been brought on regularly for trial, before the Honorable Lloyd F. MacMahon, United States District Judge, and a jury, and the Court having submitted the attached special interrogatories to the jury, and the jury having answered the said interrogatories, and the jury having returned a verdict in favor of plaintiff as against defendant R. G. Dickenson & Co., and defendants' having moved to dismiss as to defendants Robert Goodell Dickenson and Maurice Burr Corneilson, and the said motion having been granted, it is,

ORDERED, ADJUDGED and DECREED: That plaintiff PAUL CAMPBELL have judgment against defendant R. G. DICKENSON & CO., in the sum of \$18,000., on the first count with interest at 6% from November 1, 1972, and in the sum of \$15,000., on the second count with interest at 7% from July 12, 1972, with costs to be taxed, and it is further,

ORDERED: That the complaint be and it is hereby dismissed as to defendants ROBERT GOODELL DICKENSON and MAURICE BURR CORNEILSON.

Dated: New York, N.Y.
October 3, 1974

Motion for Judgment N.O.V. or New Trial

PLEASE TAKE NOTICE that, pursuant to Rule 50(b) of the Federal Rules of Civil Procedure and on the grounds set forth in the annexed affidavit of John L. Hawkins, defendants will move this Court, before the Honorable Lloyd F. MacMahon, at the United States Court House, Foley Square, New York, New York, on October 25, 1974, at 2:15 P.M. or as soon thereafter as counsel can be heard, for an order setting aside the verdict in the above-entitled action and the judgment entered thereon on October 3, 1974, and (1) directing the entry of judgment, in accordance with defendants' motion for a directed verdict, dismissing the complaint, or (2) in the alternative, granting defendants a new trial.

Dated: October 15, 1974

Affidavit in Support of Motion
for Judgment N.O.V. or
New Trial (excerpts)

8. The second count of the complaint, and the judgment for \$15,000 with interest at the rate of 7% from July 12, 1972, depend upon the jury's finding that the payment made by plaintiff to his employer constituted a loan. In refusing to set aside this finding, the Court cited principally defendants' failure to produce as a witness Mr. Boesel - the man who plaintiff's witnesses testified "made the deal" (Tr., p. 166). In so ruling, the Court overlooked three unusual circumstances which make it inappropriate in this case to attach any special weight to the absence of Mr. Boesel.

9. The first such circumstance is that, according to plaintiff's evidence, the alleged conversations concerning a loan took place on the telephone, in conference calls, conducted from the employer's side over "a conference microphone in Mr. Boesel's office" (Tr., p. 69). While Mr. Boesel was mentioned most emphatically, Messrs. Cornelison and Dickinson, both of whom were present and testified at the trial, were also said to have been involved in the conversations (see, e.g., Tr., pp. 70, 74, 109-110, 112). The collective nature of those conversations is indicated by the

fact that plaintiff's counsel made no comment to the jury concerning the absence of Mr. Boesel.

10. The second such circumstance is that plaintiff named Messrs. Cornelison and Dickinson, but not Mr. Boesel, as individual defendants in this action (see Complaint). All three were officers of plaintiff's employer and were located in Des Moines, Iowa (Tr., p. 83). Prior to the trial, plaintiff's counsel took the deposition of Mr. Cornelison, and served written interrogatories on Mr. Dickinson, but did not seek any discovery with respect to Mr. Boesel. It would clearly have been risky to produce Mr. Boesel at the trial instead of one of the other two. To have produced Mr. Boesel in addition would increase the burden on defendants' business to an unwarranted extent.

Memorandum Order of District
Court on Motion for Judgment
N.O.V. or New Trial

Treating the within as a motion for reargument, the motion to reargue is granted. Upon reargument we adhere to our decision at the conclusion of the trial denying defendant's motion for judgment N.O.V.

October 25, 1974

Received 3 copies of the within
appendix
this 8 day of April, 19 75.

Sign Dmayers

For Cliff Leeburg, Esq(s)

Att'ys for Plaintiff - Appellee